

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

IN THE MATTER OF:
Opalite Mine Site
Malheur County, Oregon

Owyhee Caldera Minerals, LLC,

Respondent

ADMINISTRATIVE ORDER DIRECTING
COMPLIANCE WITH REQUEST FOR
ACCESS

U.S. EPA Region 10
CERCLA Docket No. 10-2019-0097

Proceeding Under Section 104(e) of the
Comprehensive Environmental Response,
Compensation, and Liability Act, as
amended, 42 U.S.C. § 9604(e)

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I. JURISDICTION

1. This Administrative Order ("Order") is issued to Owhyee Caldera Minerals, LLC ("Respondent"), pursuant to the authority vested in the President of the United States by Section 104(e)(5) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9604(e)(5), and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR § 300.400(d)(4). This authority was delegated to the Administrator of the United States Environmental Protection Agency ("EPA") on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923, redelegated to the Regional Administrators of EPA on May 11, 1994, by EPA Delegation No. 14-6, and further delegated to the Section Chief of the Spill Prevention and Removal Section of the Superfund and Emergency Management Division of EPA Region 10 on April 19, 2019 by EPA Delegation R10 14-6 (SEMD).

II. STATEMENT OF PURPOSE

2. This Order requires Respondent to grant EPA and its authorized representatives entry and access to the property described in Paragraph 4 ("Property") located in Malheur County, Oregon for the purpose of determining the need for response, and choosing a response action, by conducting inspections and sampling regarding the extent of contamination, confirming the locations of new tax lot lines, and assessing the options for locations for proposed road closure, soil removal, and a potential bypass road, at and adjacent to the Opalite Mine Site ("Site"). This Order further requires Respondent to refrain from interfering with access to the Property by EPA and its authorized representatives for the purposes set forth herein.

III. FINDINGS OF FACT

3. Respondent owns property in Malheur County, Oregon at or near the Site.

Respondent purchased the Property described in Paragraph 4 from Bradley Mining Company in late 2018 or early 2019. Bradley Mining Company split the Site from one tax lot into two new tax lots in late 2018 or early 2019 in order to sell what it believed was uncontaminated property to Respondent. EPA has not accessed the Site or the Property since the new tax lot lines were drawn and therefore EPA does not have knowledge of the extent of or lack of contamination on the Property.

4. The Property is located at Tax Lot 701, Map Number 40S40ED001, Malheur County, Oregon. The Property is shown on the map in Attachment 1 to this Order.

5. The Site is located at Tax Lot 700, Map Number 40S40ED001, Malheur County, Oregon, and is shown on the map in Attachment 1 to this Order. The Site is a place where mercury, arsenic, and antimony have been released.

6. The Site may include some or all of the Property. The Property may be a place where mercury, arsenic, and antimony were released or have come to be located, or alternatively the Property may be adjacent to the Site.

7. The Site is subject to the Consent Decree dated April 19, 2012 (Case No. 3:08-CV-03968 TEH) entered in the United States District Court Northern District of California San Francisco Division. The Consent Decree resolves liability for Bradley Mining Company for contamination at the Site and also requires Bradley Mining Company to provide access to the Site as long as it is the owner. At the time the Consent Decree was entered, the Site had not yet

been split into Tax Lot 700 and Tax Lot 701. Furthermore, the Consent Decree does not include access requirements for new owners of the Site.

8. To address the release or threatened release of a hazardous substance or pollutant or contaminant at and adjacent to the Site, EPA is planning to conduct certain response actions. These actions include conducting inspections and sampling regarding the extent of contamination, confirming the locations of new tax lot lines, restricting access to contaminated areas through road closure, conducting soil removal, potentially constructing a bypass road, and conducting any other necessary response actions at the Site.

9. To perform the response actions described above, it will be necessary for employees, agents, contractors, and other representatives of EPA to enter the Property. The activities for which entry is required include: conducting inspections and sampling regarding the extent of contamination; confirming the locations of new tax lot lines; and assessing the options for locations for proposed road closure, soil removal, and a potential bypass road. After entry to conduct these activities, EPA will reassess whether any further access to the Property will be needed in order to conduct any additional necessary response actions.

10. EPA estimates that the duration of the required entry and access will be approximately 7 days.

11. Despite requests from representatives of EPA, Respondent has refused to provide access for purposes of performing the response activities described above. These requests include a letter dated April 8, 2019 from EPA Assistant Regional Counsel to Respondent, and voicemail messages dated May 2, 2019 and May 7, 2019 from EPA Assistant Regional Counsel to Respondent. Respondent sent a reply letter dated April 15, 2019, stating it would not

voluntarily grant access to the Property. Respondent did not reply to the voicemail messages. Attachment 2 is the letter from EPA to Respondent and Attachment 3 is the letter from Respondent to EPA.

IV. CONCLUSIONS OF LAW AND DETERMINATIONS

12. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

13. Respondent is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

14. All of the substances listed in Paragraphs 5 and 6 are hazardous substances or pollutants or contaminants within the meaning of Sections 101(14) and 101(23) of CERCLA, 42 U.S.C. §§ 9601(14) and 9601(23).

15. Based on the information provided in Paragraphs 3 through 7 of this Order, EPA has a reasonable basis to believe that there may be a release or threat of release of a hazardous substance or pollutant or contaminant, within the meaning of Sections 101(22) and 104(e)(1) of CERCLA, 42 U.S.C. §§ 9601(22) and 9604(e)(1), at the Property.

16. The property owned or controlled by Respondent referred to in Paragraph 4 is, or is adjacent to, a vessel, facility, establishment, or other place or property:

- a. from or to which a hazardous substance has been or may have been released;
- b. where such release is or may be threatened; and
- c. where entry is needed to determine the need for response, to identify the appropriate response, or to effectuate a response action,

within the meaning of Section 104(e)(3) of CERCLA, 42 U.S.C. § 9604(e)(3).

17. Entry to property owned or controlled by Respondent by the agents, contractors, or other representatives of the United States is needed for the purposes of determining the need for response, and choosing a response action, within the meaning of Section 104(e)(1) of CERCLA, 42 U.S.C. § 9604(e)(1).

18. EPA's request for access to the Property has not been granted.

V. ORDER

19. Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, and the Administrative Record, Respondent is hereby ordered to provide EPA and its officers, employees, agents, contractors, and other representatives, full and unrestricted access at all reasonable times to the Property for the purpose of conducting response activities, including but not limited to, conducting inspections and sampling regarding the extent of contamination, confirming the locations of new tax lot lines, and assessing the options for locations for proposed road closure, soil removal, and a potential bypass road.

20. Respondent shall not interfere with EPA's exercise of its access authorities pursuant to 42 U.S.C. § 9604(e) and 40 C.F.R. § 300.400(d), and shall not interfere with or otherwise limit any activity conducted at the Property pursuant to this Order by EPA, its officers, employees, agents, contractors, or other representatives. Any such interference shall be deemed a violation of this Order.

21. Nothing herein limits or otherwise affects any right of entry held by the United States pursuant to applicable laws, regulations, or permits.

22. This Order shall apply to and be binding upon Respondent and its successors, heirs and assigns, and each and every agent of Respondent and upon all other persons and entities who are under the direct or indirect control of Respondent, including any and all lessees of Respondent.

23. In the event of any conveyance by Respondent, or Respondent's agents, heirs, successors and assigns, of an interest in the Property, Respondent or Respondent's agents, heirs, successors and assigns shall convey the interest in a manner which ensures continued access to the Property by EPA and its representatives for the purpose of carrying out the activities pursuant to this Order. Any such conveyance shall restrict the use of the Property so that the use will not interfere with activities undertaken or to be undertaken by EPA and its representatives.

Respondent, or Respondent's agents, heirs, successors and assigns shall notify EPA in writing at least 30 days prior to the conveyance of any interest in the Property, and shall, prior to the transfer, notify the other parties involved in the conveyance of the provisions of this Order.

VI. ENFORCEMENT

24. Compliance with this Order shall be enforceable pursuant to Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5). A court may impose a civil penalty on Respondent of up to \$57,317 for each day that Respondent unreasonably fails to comply with this Order, as provided in Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5), and the Civil Monetary Penalty Inflation Adjustment Rule, 84 Fed. Reg. 5955, 40 C.F.R. Part 19.4. In addition, any person who is liable for a release or threat of release of a hazardous substance or pollutant or contaminant and who fails to comply with this Order may be liable for punitive damages in an amount up to three times the amount of any costs incurred by the United States as a result of such failure, as

provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Nothing herein shall preclude EPA from taking any additional enforcement actions, and/or other actions it may deem necessary for any purpose, including the prevention or abatement of a threat to the public health, welfare, or the environment arising from conditions at the Property, and recovery of the costs thereof.

25. Nothing in this Order constitutes a waiver, bar, release, or satisfaction of or a defense to any cause of action which EPA has now or may have in the future against Respondent, or against any entity which is not a party to this Order.

26. Nothing in this Order shall affect in any manner the right of EPA to issue any other orders to or take any other administrative or civil action against Respondent or any other parties under CERCLA which relate to the Property, the Site, or any other site.

27. Nothing in this Order constitutes a decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

VII. ADMINISTRATIVE RECORD

28. EPA has established an Administrative Record which contains the documents that form the basis for the issuance of this Order. It is available for review by appointment on weekdays between the hours of 8:00am and 4:00pm Pacific Time at the EPA offices in Seattle, Washington. To review the Administrative Record, please contact the EPA Region 10 Superfund Records Center at 206-553-4494 to make an appointment.

VIII. OPPORTUNITY TO CONFER

29. Within three business days after receipt of this Order by Respondent, Respondent may request a conference with EPA, to be held no later than two business days after

Respondent's request, on any matter pertinent to this Order, including its applicability, the factual findings and the determinations upon which it is based, the appropriateness of any actions Respondent is ordered to take, or any other relevant and material issues or contentions which Respondent may have regarding this Order. Respondent may appear in person or by an attorney or other representative at the conference. Respondent may also submit written comments or statements of position on any matter pertinent to this Order no later than the time of the conference, or at least two business days before the effective date of this Order if Respondent does not request a conference. EPA will deem Respondent to have waived its right to the conference or to submit written comments if it fails to request the conference or submit comments within the specified time period(s). Any request for a conference or written comments or statements should be submitted to:

Nick Vidargas
Office of Regional Counsel
United States Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 155
Mail Stop: 11-C07
Seattle, Washington 98101
206-553-1460

IX. EFFECTIVE DATE; COMPUTATION OF TIME

30. This Order shall be effective ten business days after its receipt by Respondent or Respondent's designated representative unless a conference is timely requested as provided above. If a conference is timely requested, then at the conclusion of the conference or after the conference, if EPA determines that no modification to the Order is necessary, the Order shall become effective immediately upon notification by EPA of such determination. If modification of the Order is determined by EPA to be necessary, the Order shall become effective upon

notification by EPA of such modification. Any EPA notification under this paragraph may, at EPA's discretion, be provided to Respondent by facsimile, electronic mail, or oral communication; provided that if EPA does use such a form of notification, it will also confirm such notification by first class, certified or express mail to Respondent or its legal counsel. Any amendment or modification of this Order by EPA shall be made or confirmed in writing.

31. For purposes of this Order, the term "day" shall mean a calendar day unless expressly stated to be a business day. "Business day" shall mean a day other than a Saturday, Sunday, or federal legal holiday. When computing any period of time under this Order, if the last day would fall on a Saturday, Sunday, or federal legal holiday, the period shall run until the next business day.

X. NOTICE OF INTENT TO COMPLY

32. On or before the effective date of this Order, Respondent shall notify EPA in writing whether Respondent will comply with the terms of this Order. Respondent's failure to notify EPA of its unconditional intent to fully comply with this Order by the time the Order becomes effective shall be 1) construed as a denial of EPA's request for access, and 2) as of the effective date of the Order, treated as a violation of the Order. Such written notice shall be sent to:


Nick Vidargas
Office of Regional Counsel
United States Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 155
Mail Stop: 11-C07
Seattle, Washington 98101

XI. TERMINATION

33. This Order shall remain in effect until Wally Moon, Section Chief of the Spill Prevention and Removal Section of the Superfund and Emergency Management Division of EPA Region 10, or his designee notifies Respondent in writing that access to the Property is no longer needed.

SO ORDERED.

May 20, 2019
Date



Wally Moon, Section Chief
Spill Prevention and Removal Section
Superfund and Emergency Management Division

ATTACHMENT 1

An aerial photograph of a rugged, mountainous landscape. Several areas are outlined in white. One large outline is labeled '700' in the center. Another outline to the left is labeled 'Mine Creek'. At the bottom, a road is labeled 'Indian Creek Loop'. Other labels include 'Creek' at the top left, 'Hot Creek' at the bottom left, and 'Creek' at the bottom right. The number '701' is also visible on the right side of the map.

OWYHEE CALDERA MINERALS LLC

MapNumber 40S40ED001

Taxlot 701

MapTaxlot 40S40E00701

REFNUM 20741

REFLink [More info](#)

BUYER

ADDRESS1 C/O WEST COAST MINING
INC

ADDRESS2 P O BOX 133

CITYSTATE COLLEGE PLACE, WA

ZIP 99324

TCA 41

ZONECODE C-A2

ALLIANCE 0

[Zoom to](#)

ATTACHMENT 2



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

1200 Sixth Avenue, Suite 155
Seattle, WA 98101-3123

OFFICE OF
REGIONAL COUNSEL

April 8, 2019

Dale Huett
Owyhee Caldera Minerals, LLC
c/o West Coast Mining, Inc.
P.O. Box 133
College Place, Washington 99324

Re: Access to Property for Response Actions Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Dear Mr. Huett:

I am writing regarding the property located at Tax Lot 701, Map Number 40S40ED001, Malheur County, Oregon, owned by Owyhee Caldera Minerals, LLC (Property). The U. S. Environmental Protection Agency, Region 10 (EPA), is seeking access to the Property for purposes of carrying out response actions at the Opalite Mine Site pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Pursuant to Section 104(e)(1) of CERCLA, 42 U.S.C. § 9604(e)(1), EPA has authority to access properties, including adjacent properties, to address releases or threats of releases of hazardous substances into the environment. EPA has documented such a release and/or threat of release at the Opalite Mine Site. EPA has determined that the Property may be a part of the Opalite Mine Site and/or is adjacent to the Opalite Mine Site.

Mike Boykin of EPA has been in contact with you in the past regarding access to the Property and EPA response activities at the Opalite Mine Site. EPA would like to conduct a 2-day site visit to the Property in June to review proposed plans for approximately 5 gates to block certain road access and for potential construction of a bypass road. Included with this letter are the proposed locations for the gates and the bypass road. Based on maps available to EPA and the new tax lot lines, it is not entirely clear which response actions will be necessary on the Property, and which will be necessary on the adjacent Tax Lot 700. EPA's response partners, the U.S. Bureau of Land Management and the Oregon Department of Environmental Quality, would also like to participate in the 2-day site visit.

Included with this letter is a draft consent for access form. Please review this document and let me know if you have any proposed edits or questions. EPA is seeking a response from you regarding this request for access by April 29, 2019. If you have technical questions about this request, please contact Mike Boykin at 206-553-6362 or boykin.michael@epa.gov. If you have legal questions about this request, please contact me at 206-553-1532 or leefers.kristin@epa.gov.

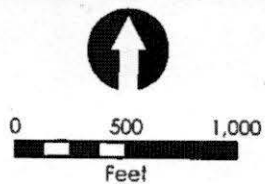
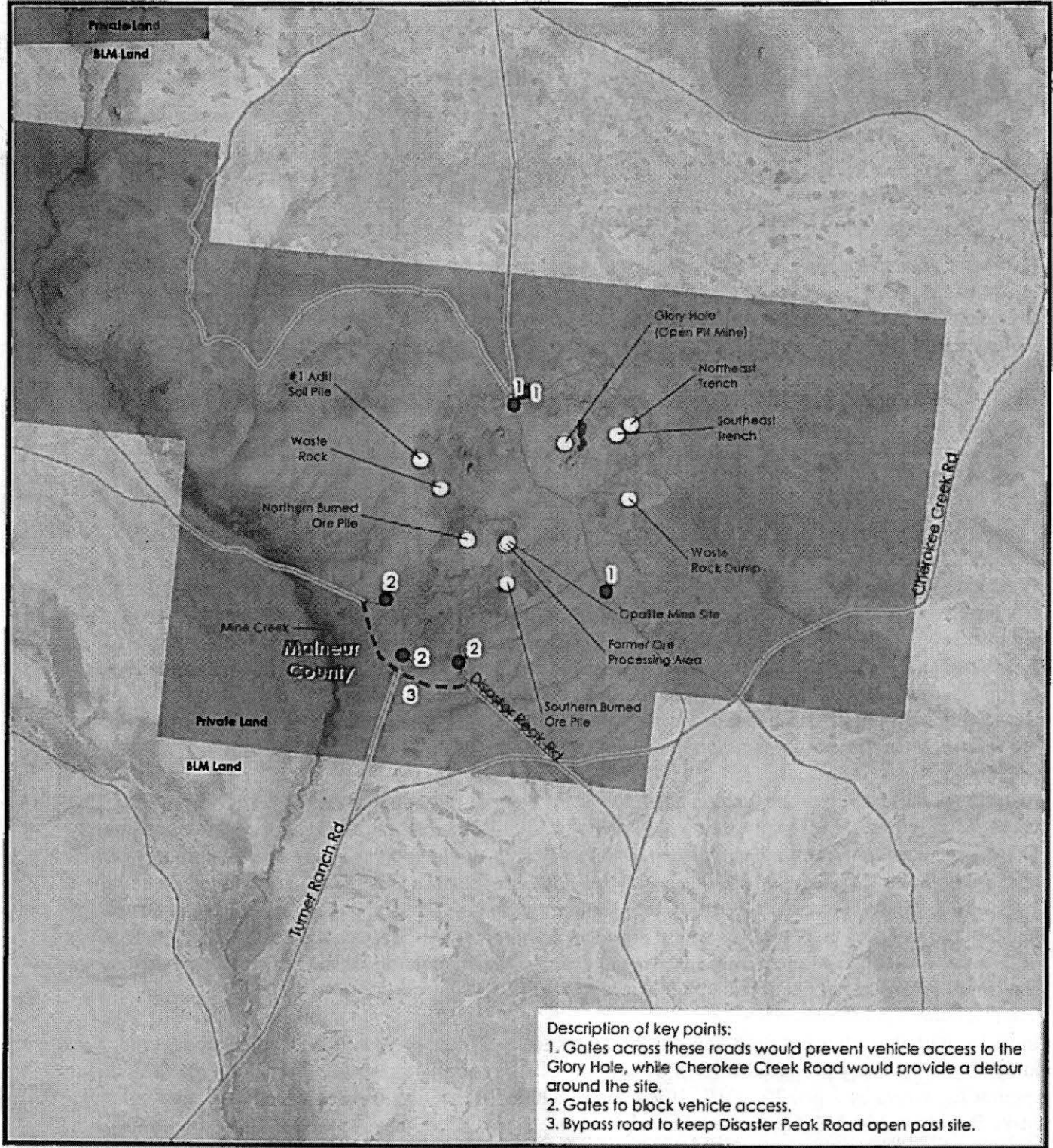
Sincerely,

A handwritten signature in black ink, appearing to read "Kris Leefers".

Kris Leefers

Enclosures: Map and Consent for Access Form

Cc: Dustin A Martinsen, Registered Agent



Source: ESRI 2010, BLM 2017

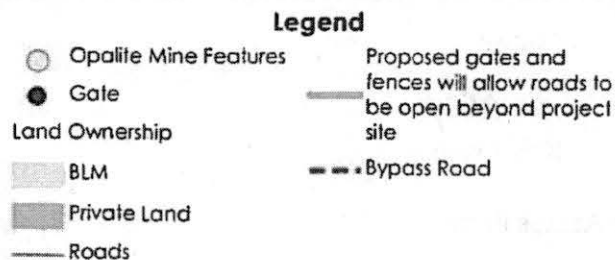


Figure 5
Option 3: Gates and Fences to Restrict Site Access

Malheur County, Oregon
February, 2018



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 155
Seattle, WA 98101-3140

CONSENT FOR ACCESS TO PROPERTY

Name: _____

Phone Number: _____

Property Location: Tax Lot 701, Map Number 40S40ED001, Malheur County, Oregon

I hereby give consent to officers, employees, authorized representatives, contractors, and persons acting at the request of the United States Environmental Protection Agency ("EPA") to enter and have access at reasonable times on June _____, 2019 to the above referenced property ("Property") for the following purposes:

1. Collecting soil, water, and air samples;
2. Sampling materials stored or disposed of on the Property;
3. Taking other actions related to the investigation of surface or subsurface contamination;
4. Taking photographs;
5. Reviewing gate construction locations and potential bypass road location; and
6. Taking any other response action deemed necessary by EPA to protect the public health or welfare or the environment.

I recognize that these actions by EPA are undertaken pursuant to its response and enforcement authorities contained in the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601, *et seq.*

This written permission for access is given by me voluntarily with knowledge of my right to refuse and without threats or promises of any kind.

Date

Signature

Title (i.e., owner, tenant, company executive, etc.)

ATTACHMENT 3

Owyhee Caldera Minerals, LLC

PO Box 133

College Place, WA 99324

April 15, 2019

Kris Leefers

US Environmental Protection Agency, Region 10

1200 Sixth Avenue, Suite 155

Seattle, WA 98101-3123

Dear Ms. Leefers,

I am in receipt of your April 8, 2019 letter regarding access to parcels of ground owned by Owyhee Caldera Minerals, LLC. (The LLC). As you are aware the LLC does not own any property that is part of the Opalite Mine Site (Property not acquired by The LLC designated as the "Opalite Mineral Mining Claim, Opalite NO.1 Mining Claim, and Opalite NO.8 Mining Claim).

The LLC specifically did not purchase certain parcels because of onsite visits with representatives from the EPA, DEQ, and BLM wherein the contaminated ground was identified (such identification did not include those parcels not procured by the LLC) by such representatives and due to the highly unlikely circumstance that contamination could have spread to the acquired parcels.

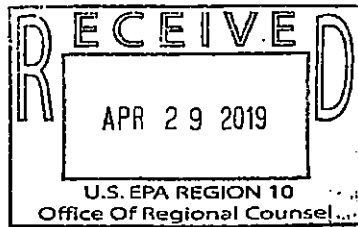
Pursuant to 42 U.S.C. 9604(e)(1) there must be a reasonable basis to believe there may be a release or threat of release of a hazardous substance or pollutant contaminant. The LLC would like to see evidence that establishes your reasonable belief that a hazardous substance or pollutant contaminant could emanate from property owned by The LLC.

Finally, I will not be signing the requested Consent For Access To Property; item 6 of your release extends greater authority to the EPA than that authority granted under 42 U.S.C. 9604. This is not to say The LLC will not cooperate with a properly obtained Order it is merely a statement that The LLC will not voluntarily grant carte blanche access to its property.

Owyhee Caldera Minerals, LLC

By: _____

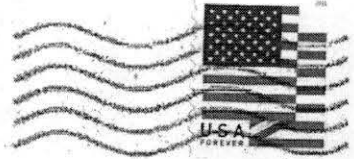
Dale Huett, Member



Dale Huett
Owyhee Caldera Minerals, LLC
PO Box 133
College Place, WA 99324

SPOKANE WA 990

25 APR 2019 PM 3:1



11-ORC

Kris Leefers
US Environmental Protection Agency, Region
10
1200 Sixth Avenue, Suite 155
Seattle, WA 98101-3123

98101-3123

